

**General Docket**  
**United States Court of Appeals for the Ninth Circuit**

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**Court of Appeals Docket #:** 18-16327

**Docketed:** 07/18/2018  
**Termed:** 08/12/2019

**Nature of Suit:** 2895 Freedom of Information Act of 1974

ALDF v. USDA, et al

**Appeal From:** U.S. District Court for Northern California, Oakland

**Fee Status:** Paid

**Case Type Information:**

- 1) civil
- 2) united states
- 3) null

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**Originating Court Information:**

**District:** 0971-4 : [4:17-cv-03903-PJH](#)

**Court Reporter:** Raynee Mercado

**Trial Judge:** Phyllis J. Hamilton, Chief District Judge

**Date Filed:** 07/11/2017

<b>Date Order/Judgment:</b>	<b>Date Order/Judgment EOD:</b>	<b>Date NOA Filed:</b>	<b>Date Rec'd COA:</b>
05/25/2018	05/25/2018	07/18/2018	07/18/2018

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**Prior Cases:**

None

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**Current Cases:**

None

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ANIMAL LEGAL DEFENSE FUND  
Plaintiff - Appellant,

Anthony T. Eliseuson  
Direct: 707-795-2533  
[COR NTC Retained]  
Animal Legal Defense Fund  
150 South Wacker Drive  
Suite 2400

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Chicago, IL 60606

Matthew G. Liebman, Senior Staff Attorney  
Direct: 707-795-2533  
[COR NTC Retained]  
Animal Legal Defense Fund  
525 E. Cotati Avenue  
Cotati, CA 94931

Daniel Waltz  
Direct: 303-880-9136  
[COR NTC Retained]  
Animal Legal Defense Fund  
The Yard  
700 Pennsylvania Avenue SE  
Washington, DC 20003

v.

UNITED STATES DEPARTMENT OF AGRICULTURE  
Defendant - Appellee,

John Samuel Koppel, Attorney  
Direct: 202-514-2495  
[COR NTC Government]  
DOJ - U.S. Department of Justice  
7264  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
Defendant - Appellee,

John Samuel Koppel, Attorney  
Direct: 202-514-2495  
[COR NTC Government]  
(see above)

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ANIMAL LEGAL DEFENSE FUND,

Plaintiff - Appellant,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; ANIMAL AND PLANT HEALTH INSPECTION SERVICE,

Defendants - Appellees.

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07/18/2018	<a href="#"><u>1</u></a> 16 pg, 790.63 KB	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 07/25/2018. Transcript ordered by 08/17/2018. Transcript due 09/17/2018. Appellant Animal Legal Defense Fund opening brief due 10/26/2018. Appellees Animal and Plant Health Inspection Service and United States Department of Agriculture answering brief due 11/26/2018. Appellant's optional reply brief is due 21 days after service of the answering brief. [10946474] (JBS) [Entered: 07/18/2018 09:57 AM]
07/20/2018	<a href="#"><u>2</u></a> 3 pg, 144.01 KB	Filed (ECF) Appellant ALDF Mediation Questionnaire. Date of service: 07/20/2018. [10949750] [18-16327] (Waltz, Daniel) [Entered: 07/20/2018 10:50 AM]
07/30/2018	<a href="#"><u>3</u></a> 2 pg, 194.63 KB	MEDIATION ORDER FILED: This case is NOT SELECTED for inclusion in the Mediation Program. Counsel may contact circuit mediator to discuss services available through the court's mediation program, to request a settlement assessment conf, or to request a stay of the appeal for settlement purposes. Also, upon agreement of the parties, the brfing sch can be modified or vacated to facilitate settlement discussions. Csl are requested to send copies of this order to their clients. Info regarding the mediation program may be found at <a href="http://www.ca9.uscourts.gov/mediation">www.ca9.uscourts.gov/mediation</a> . [10959084] (CL) [Entered: 07/30/2018 11:45 AM]
08/10/2018	<a href="#"><u>4</u></a> 4 pg, 218.35 KB	Filed (ECF) notice of appearance of John S. Koppel and Mark B. Stern for Appellees Animal and Plant Health Inspection Service and USDA. Date of service: 08/10/2018. [10973593] [18-16327] (Koppel, John) [Entered: 08/10/2018 03:24 PM]
08/13/2018	5	Added attorney John Samuel Koppel for Animal and Plant Health Inspection Service USDA, in case 18-16327. [10974053] (NAC) [Entered: 08/13/2018 09:19 AM]
09/18/2018	6	Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant ALDF. New requested due date is 11/26/2018. [11016027] [18-16327] (Waltz, Daniel) [Entered: 09/18/2018 02:52 PM]
09/18/2018	7	<b>Streamlined request [6] by Appellant ALDF to extend time to file the brief is approved. Amended briefing schedule: Appellant Animal Legal Defense Fund opening brief due 11/26/2018. Appellees Animal and Plant Health Inspection Service and United States Department of Agriculture answering brief due 12/26/2018. The optional reply brief is due 21 days from the date of service of the answering brief.</b> [11016077] (BG) [Entered: 09/18/2018 03:04 PM]
11/26/2018	<a href="#"><u>8</u></a> 218 pg, 12.8 MB	Submitted (ECF) excerpts of record. Submitted by Appellant ALDF. Date of service: 11/26/2018. [11099363] [18-16327] (Waltz, Daniel) [Entered: 11/26/2018 03:47 PM]
11/26/2018	<a href="#"><u>9</u></a> 49 pg, 453.18 KB	Submitted (ECF) Opening Brief for review. Submitted by Appellant ALDF. Date of service: 11/26/2018. [11099375] [18-16327] (Waltz, Daniel) [Entered: 11/26/2018 03:53 PM]
11/26/2018	<a href="#"><u>10</u></a> 25 pg, 690.37 KB	Filed (ECF) Appellant ALDF Motion to take judicial notice of Exhibits A and B to Declaration of Daniel H. Waltz. Date of service: 11/26/2018. [11099394] [18-16327] (Waltz, Daniel) [Entered: 11/26/2018 04:00 PM]
11/27/2018	<a href="#"><u>11</u></a> 2 pg, 187.52 KB	Filed clerk order: The opening brief <a href="#"><u>9</u></a> submitted by ALDF is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record <a href="#"><u>8</u></a> submitted by ALDF. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6.

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[11099964] (KT) [Entered: 11/27/2018 10:03 AM]

11/29/2018 12 Received 7 paper copies of Opening Brief [9] filed by ALDF. [11103396] (SD) [Entered: 11/29/2018 01:29 PM]

11/29/2018 13 Filed 4 paper copies of excerpts of record [8] in 2 volume(s) filed by Appellant ALDF. [11104482] (KT) [Entered: 11/30/2018 10:11 AM]

12/03/2018 14 Filed (ECF) Appellees Animal and Plant Health Inspection Service and USDA response non-opposing motion/form/notice at [10] Motion (ECF Filing), [10] Motion (ECF Filing). Date of service: 12/03/2018. I certify that I have separately notified all parties not registered for Appellate Electronic Filing in this case with notice of this non-opposition. [11106413] [18-16327] (Koppel, John) [Entered: 12/03/2018 09:38 AM]

12/21/2018 15  
37 pg, 202.1 KB Submitted (ECF) Answering Brief for review. Submitted by Appellees USDA and Animal and Plant Health Inspection Service. Date of service: 12/21/2018. [11131386] [18-16327] (Koppel, John) [Entered: 12/21/2018 03:39 PM]

12/21/2018 16  
33 pg, 3.13 MB Submitted (ECF) supplemental excerpts of record. Submitted by Appellees USDA and Animal and Plant Health Inspection Service. Date of service: 12/21/2018. [11131414] [18-16327] (Koppel, John) [Entered: 12/21/2018 03:45 PM]

12/21/2018 17  
2 pg, 187 KB Filed clerk order: The answering brief [15] submitted by Appellees is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The Court has reviewed the supplemental excerpts of record [16] submitted by Appellees. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [11131561] (GV) [Entered: 12/21/2018 04:12 PM]

12/22/2018 18 Filed (ECF) Streamlined request for extension of time to file Reply Brief by Appellant ALDF. New requested due date is 02/06/2019. [11132041] [18-16327] (Waltz, Daniel) [Entered: 12/22/2018 09:22 AM]

12/24/2018 19 **Streamlined request [18] by Appellant ALDF to extend time to file the brief is approved. Streamlined requests allow for a 30 day extension of time to file the brief. Amended briefing schedule: the optional reply brief is due 02/11/2019.** [11132250] (JN) [Entered: 12/24/2018 08:31 AM]

12/27/2018 20 Filed 4 paper copies of supplemental excerpts of record [16] in 1 volume(s) filed by Appellees Animal and Plant Health Inspection Service and USDA. [11134984] (KT) [Entered: 12/27/2018 02:07 PM]

12/27/2018 21 Received 7 paper copies of Answering Brief [15] filed by Appellees. [11135289] (DB) [Entered: 12/27/2018 04:28 PM]

01/16/2019 22 This case is being considered for an upcoming oral argument calendar in Seattle

Please review the Seattle sitting dates for May 2019 and the 2 subsequent sitting months in that location at [http://www.ca9.uscourts.gov/court\\_sessions](http://www.ca9.uscourts.gov/court_sessions). If you have an unavoidable conflict on any of the dates, please file [Form 32](#) within 3 business days of this notice using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's [instructions](#) carefully.

When setting your argument date, the court will try to work around unavoidable conflicts; the

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court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document**: File Correspondence to Court; **Subject**: request for mediation).[11155845] (AW) [Entered: 01/16/2019 02:41 PM]

01/25/2019 23

This case is being considered for an upcoming oral argument calendar in Anchorage.

Please review the Anchorage sitting dates for June 2019 at [http://www.ca9.uscourts.gov/court\\_sessions](http://www.ca9.uscourts.gov/court_sessions). If you have an unavoidable conflict on any of the dates, please file [Form 32](#) **within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's [instructions](#) carefully.

When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document**: File Correspondence to Court; **Subject**: request for mediation). [11167453] (KS) [Entered: 01/25/2019 03:23 PM]

02/11/2019 [24](#)  
25 pg, 287.88 KB

Submitted (ECF) Reply Brief for review. Submitted by Appellant ALDF. Date of service: 02/11/2019. [11185712] [18-16327] (Waltz, Daniel) [Entered: 02/11/2019 12:47 PM]

02/11/2019 [25](#)  
1 pg, 77.02 KB

Filed (ECF) Appellant ALDF Correspondence: Affidavit of Service: Appellant's Reply Brief. Date of service: 02/11/2019 [11185769] [18-16327] (Waltz, Daniel) [Entered: 02/11/2019 01:24 PM]

02/12/2019 [26](#)  
2 pg, 186.58 KB

Filed clerk order: The reply brief [\[24\]](#) submitted by ALDF is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be submitted to the principal office of the Clerk. [11186751] (KT) [Entered: 02/12/2019 09:05 AM]

02/13/2019 27

Received 7 paper copies of Reply Brief [\[24\]](#) filed by ALDF. [11189021] (SD) [Entered: 02/13/2019 01:34 PM]

03/31/2019 28

Notice of Oral Argument on Wednesday, June 12, 2019 - 09:00 A.M. - AK Ross Historic Courtroom - Anchorage OldFedBldg AK.

View the Oral Argument Calendar for your case [here](#).

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the **ACKNOWLEDGMENT OF HEARING NOTICE** filing type in CM/ECF no later than 21 days before Wednesday, June 12, 2019. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[11247401] (AW) [Entered: 03/31/2019 06:10 AM]

04/18/2019 29

Terminated Daniel Halainen for USDA and Animal and Plant Health Inspection Service in 18-

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019		16327 for failure to register for electronic filing. [11269116] (SLM) [Entered: 04/18/2019 03:10 PM]
05/30/2019	30	Filed (ECF) Acknowledgment of hearing notice by Attorney John Samuel Koppel for Appellees Animal and Plant Health Inspection Service and USDA. Hearing in Anchorage on 06/12/2019 at 09:00 A.M. (Courtroom: Ross Historic Courtroom). Filer sharing argument time: No. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 05/30/2019. [11313648] [18-16327] (Koppel, John) [Entered: 05/30/2019 12:47 PM]
05/30/2019	31	Filed (ECF) Acknowledgment of hearing notice by Attorney Mr. Matthew G. Liebman for Appellant ALDF. Hearing in Anchorage on 06/12/2019 at 09:00 A.M. (Courtroom: AK Ross Historic Courtroom). Filer sharing argument time: No. (Argument minutes: 15.) Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 05/30/2019. [11313706] [18-16327] (Liebman, Matthew) [Entered: 05/30/2019 01:16 PM]
06/12/2019	<a href="#">32</a> 2 pg, 84.42 KB	Filed (ECF) Appellant ALDF citation of supplemental authorities. Date of service: 06/12/2019. [11329150] [18-16327] (Waltz, Daniel) [Entered: 06/12/2019 04:07 PM]
06/12/2019	33	ARGUED AND SUBMITTED TO A. WALLACE TASHIMA, WILLIAM A. FLETCHER and MARSHA S. BERZON. [11329253] (BJK) [Entered: 06/12/2019 04:56 PM]
06/12/2019	<a href="#">34</a> 1 pg, 5.26 MB	Filed Audio recording of oral argument. <b>Note:</b> Video recordings of public argument calendars are available on the Court's website, at <a href="http://www.ca9.uscourts.gov/media/">http://www.ca9.uscourts.gov/media/</a> [11329273] (BJK) [Entered: 06/12/2019 05:15 PM]
06/17/2019	<a href="#">35</a> 2 pg, 86.39 KB	Filed (ECF) Appellees Animal and Plant Health Inspection Service and USDA citation of supplemental authorities. Date of service: 06/17/2019. [11334368] [18-16327] (Koppel, John) [Entered: 06/17/2019 03:02 PM]
06/25/2019	<a href="#">36</a> 19 pg, 195.91 KB	Filed (ECF) Appellant ALDF citation of supplemental authorities. Date of service: 06/25/2019. [11344104] [18-16327] (Waltz, Daniel) [Entered: 06/25/2019 02:32 PM]
06/27/2019	<a href="#">37</a> 2 pg, 85.99 KB	Filed (ECF) Appellees Animal and Plant Health Inspection Service and USDA citation of supplemental authorities. Date of service: 06/27/2019. [11347263] [18-16327] (Koppel, John) [Entered: 06/27/2019 02:42 PM]
08/12/2019	<a href="#">38</a> 19 pg, 207.04 KB	FILED OPINION (A. WALLACE TASHIMA, WILLIAM A. FLETCHER and MARSHA S. BERZON) We deny as moot ALDF's motion to take judicial notice. AFFIRMED. Judge: WAF Authoring. FILED AND ENTERED JUDGMENT. [11393571] (AKM) [Entered: 08/12/2019 07:37 AM]

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